

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 03-1368

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United States of America,

Appellee,

v.

Dwayne Duncan, also known as  
Dewayne Steven Duncan, also  
known as Dewayne D. Duncan, also  
known as Dewayne Steven Duncan,  
also known as Dewayne Steveson  
Duncan,

Appellant.

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\* Appeal from the United States  
\* District Court for the Eastern  
\* District of Missouri.  
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\* [UNPUBLISHED]  
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Submitted: October 2, 2003  
Filed: October 14, 2003

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Before BYE, BOWMAN, and MELLOY, Circuit Judges.

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PER CURIAM.

Dwayne Duncan challenges the sentence the district court<sup>1</sup> imposed after he pleaded guilty to failing to disclose an event affecting his continued right to Social Security benefits, in violation of 42 U.S.C. § 408(a). The district court sentenced him

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<sup>1</sup>The Honorable Catherine D. Perry, United States District Judge for the Eastern District of Missouri.

to 13 months imprisonment and 3 years supervised release. On appeal, Duncan's counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that the district court should have imposed a more lenient sentence.

To the extent counsel argues the district court should have departed downward from the Guidelines range to impose probation, the court's discretionary decision not to depart is unreviewable, see United States v. VanHouten, 307 F.3d 693, 696 (8th Cir. 2002); and to the extent counsel argues the district court should have imposed a more lenient sentence within the applicable Guidelines range, that argument is unreviewable as well, see United States v. Garrido, 38 F.3d 981, 986 (8th Cir. 1994).

Following our independent review of the record, see Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no other nonfrivolous issues. Accordingly, the judgment is affirmed. We also grant counsel's motion to withdraw.

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